

LAWS AND COMMITTEE RULES
GOVERNING CONTESTED-ELECTION
CASES IN THE HOUSE OF
REPRESENTATIVES



WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

U. S. Laws, Statutes, etc.

LAWS AND COMMITTEE RULES GOVERNING CONTESTED-ELECTION CASES IN THE HOUSE OF REPRESENTATIVES



WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

THE LAW GOVERNING CONTESTED ELECTIONS.

Each House shall be the judge of the elections, returns, and qualifications of its own Members. Constitution, Art. I, sec. 5.

NOTICE OF INTENTION TO CONTEST.

Whenever any person intends to contest an election of any Member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same, and, in such notice, shall specify particularly the grounds upon which he relies in the contest. Rev. Stats. of the U. S., Title II, ch. 8, sec. 105.

TIME FOR ANSWER.

Any Member upon whom the notice mentioned in the preceding section may be served shall, within thirty days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election; and shall serve a copy of his answer upon the contestant. Rev. Stats., sec. 106.

TIME ALLOWED FOR TAKING TESTIMONY.

In all contested-election cases the time allowed for taking testimony shall be ninety days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first forty days, the returned Member during the succeeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. Rev. Stats., sec. 107.

By the act of March 2, 1875 (*U. S. Statutes at Large*, vol. 18, ch. 119, p. 338), it is provided that sec. 107, R. S., shall be construed as requiring all testimony in cases of contested election to be taken within ninety days from the day on which the answer of the returned Member is served upon the contestant.

NOTICE AND SERVICE OF DEPOSITIONS.

The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the names of the witnesses to be

Rev. Stats.,
Title II, ch. 8,
sec. 108.

examined, and their places of residence, and of the name of any officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest, if, by the use of reasonable diligence, such personal service can be made; but if, by the use of such diligence, personal service can not be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service. Testimony in rebuttal may be taken on five days' notice.

TESTIMONY TAKEN AT SEVERAL PLACES AT SAME TIME.

Rev. Stats., sec.
109.

Testimony in contested-election cases may be taken at two or more places at the same time.

WHO MAY ISSUE SUBPŒNAS.

Rev. Stats., sec.
110.

When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna to either of the following officers who may reside within the congressional district in which the election to be contested was held:

First. Any judge of any court of the United States.

Second. Any chancellor, judge, or justice of a court of record of any State.

Third. Any mayor, recorder, or intendant of any town or city.

Fourth. Any register in bankruptcy or notary public.

WHAT THE SUBPŒNAS SHALL CONTAIN.

Rev. Stats., sec.
111.

The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpœna, directed to all such witnesses as shall be named to him, requiring their attendance before him, at some time and place named in the subpœna, in order to be examined respecting the contested election.

WHEN JUSTICES OF THE PEACE MAY ACT.

Rev. Stats., sec.
112.

In case none of the officers mentioned in section 110 are residing in the congressional district from which the election is proposed to be contested, the application thereby authorized may be made to any two justices of the peace residing within the district; and they may receive such application, and jointly proceed upon it.

DEPOSITIONS BY CONSENT.

It shall be competent for the parties, their agents or attorneys authorized to act in the premises, by consent in writing, to take depositions without notice; also, by such written consent, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in common law, or civil actions, or in chancery, by either the laws of the United States or of the State in which the same may be taken, and to waive proof of the official character of such officer or officers. Any written consent given as aforesaid shall be returned with the depositions.

Rev. Stats.,
Title II, ch. 8,
sec. 113.

SERVICE OF SUBPŒNA.

Each witness shall be duly served with a subpœna, by a copy thereof delivered to him or left at his usual place of abode, at least five days before the day on which the attendance of the witness is required.

Rev. Stats., sec.
114.

WITNESSES NEED NOT ATTEND OUT OF THE COUNTY.

No witness shall be required to attend an examination out of the county in which he may reside or be served with a subpœna.

Rev. Stats., sec.
115.

PENALTY FOR FAILURE TO ATTEND OR TESTIFY.

Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpœna was issued, and for his use, by an action of debt, in any court of the United States; and shall also be liable to an indictment for a misdemeanor, and punished by fine and imprisonment.

Rev. Stats., sec.
116.

WITNESSES OUTSIDE OF DISTRICT.

Depositions of witnesses residing outside of the district and beyond the reach of a subpœna may be taken before any officer authorized by law to take testimony in contested-election cases in the district in which the witness to be examined may reside.

Rev. Stats., sec.
117.

PARTY NOTIFIED MAY SELECT AN OFFICER.

The party notified as aforesaid, his agent or attorney, may, if he sees fit, select an officer (having authority to take depositions in such cases) to officiate, with the officer named in the notice, in the taking of the depositions; and if both such officers attend, the depositions shall be

Rev. Stats., sec.
118.

taken before them both, sitting together, and be certified by them both. But if any one of such officers attend, the deposition may be taken before and certified by him alone.

DEPOSITIONS TAKEN BY PARTY OR AGENT.

Rev. Stats., Title II, ch. 8, sec. 119.

At the taking of any depositions under this chapter, either party may appear and act in person, or by agent or attorney.

EXAMINATION OF WITNESSES.

Rev. Stats., sec. 120.

All witnesses who attend in obedience to a subpoena, or who attend voluntarily at the time and place appointed, of whose examination notice has been given, as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpoena, or, in case of his absence, by any other officer who is authorized to issue such subpoena, or by the officer before whom the depositions are to be taken by written consent, or before whom the depositions of witnesses residing outside the district are to be taken, as the case may be, touching all such matters respecting the election about to be contested as shall be proposed by either of the parties or their agents.

LIMITATION OF TESTIMONY.

Rev. Stats., sec. 121.

The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections one hundred and five and one hundred and six.

HOW TESTIMONY SHALL BE WRITTEN OUT AND ATTESTED.

Rev. Stats., sec. 122.

The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence, and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively.

PRODUCTION OF PAPERS.

Rev. Stats., sec. 123.

The officer shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they may be official papers such persons shall be liable to all the penalties prescribed in section one hundred and sixteen. All papers thus produced, and all certified or sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the Clerk of the House of Representatives.

ADJOURNMENTS.

The taking of testimony may, if so stated in the notice, be adjourned from day to day. Rev. Stats., Title II, ch. 8, sec. 124.

NOTICE, ETC., ATTACHED TO DEPOSITIONS.

The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpoena, where any has been served, shall be attached to the depositions when completed. Rev. Stats., sec. 125.

COPY OF NOTICE AND ANSWER TO ACCOMPANY TESTIMONY.

A copy of the notice of contest, and of the answer of the returned member, shall be prefixed to the depositions taken, and transmitted with them to the Clerk of the House of Representatives. Rev. Stats., sec. 126.

HOW TESTIMONY IS TO BE SENT TO CLERK OF HOUSE AND HOW OPENED.

All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify and carefully seal and immediately forward the same, by mail or by express, addressed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia; and shall also indorse upon the envelope containing such deposition or testimony the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and shall subscribe such indorsement. Section 127 of Rev. Stats., as amended by act of March 2, 1887, U. S. Stats. L., 49th Cong., 2d sess., vol. 24, chap. 318 (p. 445).

The Clerk of the House of Representatives, upon the receipt of such deposition or testimony, shall notify the contestant and the contestee, by registered letter through the mails, to appear before him at the Capitol, in person or by attorney, at a reasonable time to be named, not exceeding twenty days from the mailing of such letter, for the purpose of being present at the opening of the sealed packages of testimony and of agreeing upon the parts thereof to be printed. Upon the day appointed for such meeting the said clerk shall proceed to open all the packages of testimony in the case, in the presence of the parties or their attorneys, and such portions of the testimony as the parties may agree to have printed shall be printed by the Public Printer, under the direction of the said clerk; and in case of disagreement between the parties as to the printing of any portion of the testimony, the said clerk shall determine whether such portion of the testimony shall be printed; and the said clerk shall prepare a suitable index to be printed with the record. And the notice of contest and the answer of the sitting member shall also be printed with the record.

If either party, after having been duly notified, should fail to attend, by himself or by an attorney, the clerk shall proceed to open the packages, and shall cause such portions of the testimony to be printed, as he shall determine.

He shall carefully seal up and preserve the portions of the testimony not printed, as well as the other portions when returned from the Public Printer, and lay the same before the Committee on Elections at the earliest opportunity. As soon as the testimony in any case is printed the clerk shall forward by mail, if desired, two copies thereof to the contestant and the same number to the contestee; and shall notify the contestant to file with the clerk, within thirty days, a brief of the facts and the authorities relied on to establish his case. The clerk shall forward by mail two copies of the contestant's brief to the contestee, with like notice.

Upon receipt of the contestee's brief the clerk shall forward two copies thereof to the contestant, who may, if he desires, reply to new matter in the contestee's brief within like time. All briefs shall be printed at the expense of the parties respectively, and shall be of like folio as the printed record; and sixty copies thereof shall be filed with the clerk for the use of the Committee on Elections.

FEES OF WITNESSES.

Revised Stat-
utes of the United
States, Title II,
chap. 8, sec. 123.

Every witness attending by virtue of any subpoena herein directed to be issued shall be entitled to receive the sum of seventy-five cents for each day's attendance, and the further sum of five cents for every mile necessarily traveled in going and returning. Such allowance shall be ascertained and certified by the officer taking the examination, and shall be paid by the party at whose instance such witness was summoned.

FEES OF OFFICERS.

Rev. Stats., sec.
129.

Each judge, justice, chancellor, chief executive officer of a town or city, register in bankruptcy, notary public, and justice of the peace, who shall be necessarily employed pursuant to the provisions of this chapter, and all sheriffs, constables, or other officers who may be employed to serve any subpoena or notice herein authorized, shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the State wherein such service may be rendered.

EXPENSES OF CONTEST.

Rev. Stats., sec.
130.

No payment shall be made by the House of Representatives, out of its contingent fund or otherwise, to either party to a contested-election case for expenses incurred in prosecuting or defending the same.

ALLOWANCES FOR EXPENSES OF ELECTION CONTESTS.

No contestee or contestant for a seat in the House of Representatives shall be paid exceeding two thousand dollars for expenses in election contests; and before any sum whatever shall be paid to a contestant or contestee for expenses of election contests, he shall file with the clerk of the Committee on Elections a full and detailed account of his expenses, accompanied by the vouchers and receipts for each item, which account and vouchers shall be sworn to by the party presenting the same, and no charges for witness fees shall be allowed in said accounts unless made in strict conformity to section one hundred and twenty-eight Revised Statutes of the United States.

Act of March 3,
1879, U. S. Stat.
L., 45th Cong., 3d
sess., vol. 20, chap.
182 (p. 400).



